



DEPARTMENT OF CONSERVATION

DIVISION OF LAND RESOURCE PROTECTION

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June 14, 2007

RECEIVED

Mr. Darryl Boyd, Principal Planner
San José Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, CA 95110-1795

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**CITY OF SAN JOSE
DEVELOPMENT SERVICES**

Subject: Coyote Valley Specific Plan Draft Environmental Impact Report (DEIR) -
SCH# 2005062017, City of San Jose, Santa Clara County

Dear Mr. Boyd:

The Department of Conservation's (Department) Division of Land Resource Protection (Division) monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act and other agricultural land conservation programs. The Division has reviewed the above DEIR and has the following comments.

Project Description

The project involves development of the Coyote Valley Specific Plan (SP), a planned mixed-use, integrated community covering a 7,500-acre area south of the City of San José (City) within its Sphere of Influence. The SP would provide for 50,000 jobs and 25,000 dwelling units within the specified areas, with a build-out period of 25-50 years. The Development Area of the SP consists of approximately 3,800 acres and will require annexation of approximately 1,800 acres to the City while the remaining Coyote Valley Greenbelt is not planned for development or annexation. The Development Area is surrounded by undeveloped hillsides to the west and north used for cattle grazing and by the Greenbelt to the east and south.

According to the DEIR, the project will convert approximately 2,400 acres of important farmland (Prime Farmland-2,270 acres, Unique Farmland-39 acres and Farmland of Statewide Importance-55 acres) as defined by the Department's Farmland Mapping and Monitoring Program. The Development Area contains approximately 12 parcels totaling approximately 215 acres enforceably restricted by Williamson Act contract(s) that will be terminated for project development.

Project Impacts on Agricultural Land

The DEIR has determined that the project's conversion of 2,400 acres of important farmland is a significant impact and that the impacts of terminating Williamson Act contracts is taken into account when considering the impacts of farmland conversion. However, the Department views the significance of impacts to Williamson Act contracts as a distinct consideration given the public protection accorded the involved farmland and the public's investment in the preservation of the farmland through constitutionally protected tax reduction and subvention reimbursement. This distinction is recommended by CEQA in its Checklist for Initial Study and in the DEIR's own Thresholds of Significance (4.1.2.1). Therefore, we recommend separate consideration and determination of impacts and mitigation for Williamson Act contracts in the project's Final EIR (FEIR).

Mitigation of Impacts to Agricultural Land

The DEIR explains that the Santa Clara Local Agency Formation Commission (LAFCO) is drafting agricultural mitigation policies involving mitigating the conversion of prime agricultural land at a minimum 1:1 ratio (one acre preserved for every acre converted), but the policies would be advisory only. The DEIR discusses the creation of new farmland from non-agricultural land and protecting existing farmland with agricultural conservation easements as potentially feasible mitigation options, but does not require either option, instead requiring a Statement of Overriding Consideration.

A Statement of Overriding Consideration does not absolve a lead agency from the obligation to propose feasible mitigation that lessens a project's impacts. The City should determine whether a mitigation option is feasible and, if it is, propose it as part of project approval. The City Council, then, can accept for reject the proposal.

Agricultural conservation easements have been utilized as mitigation of agricultural impacts by several lead agencies, including the cities of Woodland and Davis in Yolo County, Manteca in San Joaquin County and Vacaville in Solano County. Furthermore, deposit of in lieu mitigation fees have been utilized in order to purchase easements through an appropriate agency or entity. Typically, project developers have been required to establish easements or pay in lieu fees. Finally, for those acres involving Williamson Act contract termination, the ratio of preserved acres can be increased.

Williamson Act Land

The DEIR states that LAFCO encourages city processing of annexations within Urban Service Areas without LAFCO review. In a case involving the annexation of Williamson Act land, the city must adhere to statute in notifying the Department and succeeding to the contract. Pursuant to Government Code §51243, if a city annexes land under Williamson Act contract, the city must succeed to all rights, duties and powers of the

county under the contract unless conditions in §51243.5 apply to give the city the option to not succeed to the contract. Although a city may have protested a contract and although LAFCO may have upheld the protest, conditions in §51243.5 may not have been met to give the city the option to not succeed to the contract. For example, the protest may not have been valid pursuant to §51243.5(f). A LAFCO (or city in place of LAFCO) must notify the Department within 10 days of a city's proposal to annex land under contract (Government Code §56753.5). A LAFCO must not approve a change to a sphere of influence or annexation of contracted land to a city unless specified conditions apply (Government Code §§51296.3, 56426, 56426.5, 56749 and 56856.5). The Department recommends that the FEIR include discussion of these requirements, as well as the following:

As a general rule, land can be withdrawn from Williamson Act contract only through the nine-year nonrenewal process. Immediate termination via cancellation is reserved for "extraordinary", unforeseen situations (See Sierra Club v. City of Hayward (1981) 28 Cal.3d 840, 852-855). Furthermore, it has been held that "cancellation is inconsistent with the purposes of the (Williamson) act if the objectives to be served by cancellation should have been predicted and served by nonrenewal at an earlier time, or if such objectives can be served by nonrenewal now" (Sierra Club v. City of Hayward).

- If cancellation is proposed, notification must be submitted to the Department when the county or city accepts the application as complete (Government Code §51284.1). The board or council must consider the Department's comments prior to approving a tentative cancellation. Required findings must be made by the board or council in order to approve tentative cancellation. Cancellation involving FSZ contracts include additional requirements. We recommend that the DEIR include discussion of how cancellations involved in this project would meet required findings. However, notification must be submitted separately from the CEQA process and CEQA documentation. (The notice should be mailed to Bridgett Luther, Director, Department of Conservation, c/o Division of Land Resource Protection, 801 K Street MS 18-01, Sacramento, CA 95814-3528.)
- Termination of a Williamson Act/FSZ contract by acquisition can only be accomplished by a public agency, having the power of eminent domain, for a public improvement. The Department must be notified in advance of any proposed public acquisition (Government Code §51290 - 51292), and specific findings must be made. The property must be acquired in accordance with eminent domain law by eminent domain or in lieu of eminent domain in order to void the contract (§51295). The public agency must consider the Department's comments prior to taking action on the acquisition. School districts are precluded from acquiring land under FSZ contract. We recommend discussion in the DEIR of whether such action is envisioned by this project and how the acquisition will meet the required findings. However, notification must be submitted separately from the CEQA process and CEQA documentation to the address noted above.

- If any part of the site is to continue under contract, or remain within an agricultural preserve, after project completion, the DEIR should discuss the proposed uses for those lands. Uses of contracted and preserve land must meet compatibility standards identified in Government Code §51238 - 51238.3, 51296.7. Otherwise, contract termination (see above) must occur prior to the initiation of the land use, or the preserve must be disestablished.
- An agricultural preserve is a zone authorized by the Williamson Act, and established by the local government, to designate land qualified to be placed under contract. Preserves are also intended to create a setting for contract-protected lands that is conducive to continuing agricultural use. Therefore, the uses of agricultural preserve land must be restricted by zoning or other means so as not to be incompatible with the agricultural use of contracted land within the preserve (Government Code §51230). The DEIR should also discuss any proposed general plan designation or zoning within agricultural preserves affected by the project.

Information about agricultural conservation easements, the Williamson Act and provisions noted above is available on the Department's website or by contacting the Division at the address and phone number listed below. The Department's website address is:

<http://www.conservation.ca.gov/dlrp/index.htm>

Thank you for the opportunity to comment on this DEIR. Pursuant to Public Resources Code §21092.5(a), the Department looks forward to receiving your response and a copy of the FEIR. If you have questions on our comments or require technical assistance or information on agricultural land conservation, please contact Bob Blanford at 801 K Street, MS 18-01, Sacramento, California 95814; or, phone (916) 327-2145.

Sincerely,



Brian Leahy
Assistant Director

cc: State Clearinghouse

Guadalupe-Coyote Resource Conservation District

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